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U.S.A. PHONES SOUTHWEST

Payphone Division of AVOR Inc

ORIGINAL

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Colorado Springs, CO 80904

RECEIVED

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MAY 25 2004

May 18, 2004

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington D.C. 20554

Ex Parte Notice

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

At the request of APCC, I am enclosing copies of two (2) e-mails I have generated in the last year regarding dial around compensation (DAC). As follows:

- August 2003 e-mail to E. Benensky of AT&T with a copy to Randy Nichols at APCC service. In this e-mail I am objecting to the matter of re-payment with interest to AT&T for DAC.
- April 2004 e-mail to D. Rosse of APCC with copies to Kathleen Abernathy, Michael Copps, KJMWEB and Jonathon Adelstein of the FCC; Bill Steele of the Colorado Public Utilities Commission, Senator Wayne Allard of Colorado, Senator Ben Nighthorse Campbell of Colorado, Representative Joel Hefley of Colorado and the Colorado Payphone Association.

Thank you for your consideration in this matter.

Sincerely,

Gary Buckland

Attachments

No. of Copies rec'd 0
List ABCDE

DAC Payment dispute

From gary l buckland <buck553@juno.com>
To: ebenensky@att.com
Cc: rnichols@apcc.com
Date: Wed, 13 Aug 2003 15:32:21 -0600
Subject: Re: AT&T True-Up Dispute

Dear Ms Benensky

I am in receipt of your attached e-mail note

I have been involved in DAC [Dial Around Compensation] since its very inception as required in the Federal Telecommunications Act of 10/01/1996

(We) along with many [PSP's] were "forced" to pay for a system, at considerable expense, that was to enable AT&T as well as any other IXC to "track" Dial Around Compensation calls made from our pay telephones. This system was installed at the insistence of the "IXC" community - namely the "Flex ANI 11" tracking system. AT&T is a part to those that required the system to be installed for tracking and payment of Dial Around Compensation payment obligations.

In addition to this [we] have our own "proprietary" DAC comprehensive records to review and analyze

AT&T chose to use a "line averaging" DAC payment scheme as opposed to using the Flex ANI11 system that [PSP's] were forced to pay for but was not correctly utilized. It is now AT&T's claim that you "overpaid" our company in its DAC obligations.

We as a company accepted "your numbers" in good faith as payment for your Dial Around Compensation obligation.

Now AT&T expects our company as well as many others to "pay you back - with interest" - a "claimed" amount that you say that AT&T has overpaid our company and those of many others. If this is true - which I feel it is not - what you are describing is a "Forced" loan to our company that we did not want or ask for. Interest payment on your "claimed" overpayment is absurd. [Next time you pay your credit card invoice - pay double the amount owed - then send the credit card company an invoice for "interest owed" on the amount that you "over paid them"] I can tell you what kind of a response that you will receive in reply to your request for "interest payment" on the amount that you "claim overpayment of"!!!

Using (our proprietary records) I have done a yearly analysis of the amount of DAC funds that have been paid to our company - since its inception on 10/01/1996.

I have used the same "methodology" as AT&T has done in the past - as to amounts owed to our company for Dial Around Payment fee obligations.

The sheer numbers tell the story. It is a matter of simple math for me to disagree with your contention that we were "over paid" DAC obligations.

The amount of funds forwarded to us from APCC - our assigned DAC -

DAC Payment dispute

collection agent is as follows

Since 10/01/1996 we have received payment that would indicate payment for 50,000 to 100,000 DAC calls per year. AT&T consistently constitutes approximately 45% of the total number of DAC calls made on out pay telephones

(Our) records indicate - consistently - that there are far in excess of 100,000 "YEARLY" DAC calls made from our pay telephones , in excess of 1 1/2 minutes duration, over the past [6 1/2] year time period This amounts to DAC payment obligation well in an excess of 700,000 DAC calls made from our pay telephones. AT&T constitutes approximately 45% of this total figure. This translates into approximately \$75,600 00 that would have been paid to USA Phones Southwest as payment for DAC payment obligations for the mentioned time period

Actual AT&T DAC payment to our company is a little over 1/2 of this amount

In short - we do Not agree with your records or that of the clearing house that represents your "claim" of payment. Quite the opposite - it is our contention that AT&T is in arrears in DAC payment to our company for DAC payment obligations

Sincere Regards

Gary Buckland
President
AVOR, Inc
d/b/a/ USA Phones Southwest

cc Randy Nichols - President - American Public Communication Council
FCC Commissioners
Senators
Wayne Allard - Ben Night Horse Campbell
Representative
Joel Hefly

=====

On Wed, 13 Aug 2003 14.02.38 -0500 "Benensky, Elisabeth"

<ebeneusky@atc.com> writes

> Dear Mr Buckland,

>

> We have looked over your records with the NPC and have not found any
> problems with DAC compensation

>

> According to the summary statements from the NPC the total due to
> AT&T from USA Payphones is \$4,077 65. This balance will be split
> over 4 quarters with deductions beginning October 2003.

>

> <<ATTColPmtFINAL pdf>>

> Lisa Benensky

> AT&T-CSLSM

> (908) 234-3371

From Randy Nichols <rnichols@apcc.net>
To 'gary I buckland' <buck553@juno.com>
Date Fri, 23 Apr 2004 11 36 06 -0400
Subject RE: DAC ////////// American Public Communications Council

Gary,

I read with real interest your email. It is a thoughtful piece of work.
I am looking at the best way we can make sure the FCC not only has it but pays attention to it.

FYI I have attached for your information our complaint to the FCC about the "take back". We also are directly confronting each of the involved carriers and will have more to say soon.

Thank you

Randy Nichols

-----Original Message-----

From gary I buckland [mailto:buck553@juno.com]
Sent Thursday, April 22, 2004 6 39 PM
To Randy Nichols
Subject Fw: DAC ////////// American Public Communications Council

From gary I buckland <buck553@juno.com>
To drosse@apcc.net
Cc Michael Powell@fcc.gov, Kathleen Abernathy@fcc.com, Michael J. Copps@fcc.com, KJMWEB@fcc.gov, Jonathan Adelstein@fcc.gov
Date Wed, 21 Apr 2004 10 51 20 -0600
Subject DAC ////////// American Public Communications Council
Message-ID <20040421 105121 -3675155 0 buck553@juno.com>

David This note is in response to the recent DAC payment, for the 4th quarter of 2003, that we just received along with all of the various reports from [IDEAS]

After seeing the amount of the check that we received and reading all of the latest "IDEAS reports" provided as to the DAC payment methodology - I have to voice my opinion and dismay at this total DAC "Dial Around Commission" payment farce as it now is being implemented.

I have kept track of the DAC system since day - one - 10/01/1996

For the past [6] years we have used a management tracking system [PNM PLUS] an Elcotel software management system, that is a Very sophisticated record keeping system.

I have kept Very close tabs on monthly pay phone usage - and especially year end

[pay phone] usage records

Without fail the DAC payments have fallen in the [50 - 60 %] payment range - that is to say about 1/2 of D/A calls [recorded] are being paid for. It is a Very simple deduction.

Our record keeping system shows the TOTAL amount of DAC dollars "paid" - - divided by the Total amount of DAC calls "made" = 50% to 60% Payment. This has been consistent over the "entire" period since 10/01/1996.

THESE FIGURES ARE COMING FROM SMDR INFORMATION ---- which has been highly "filtered". NO calls of 60 seconds or less are included in the above information.

As to the accuracy of all the numbers mentioned - I would place Far more confidence in these numbers than I will in the "numbers" that the various Dial Tone providers are throwing about. They are wanting to "take back" payments - with NO - documentation for the "take backs" / with interest, which is absurd/ based on numbers "they" say were in error. If they were "wrong" then - why should I think they are "right" now - in view of that which I am presenting.

By their very nature - "DIAL AROUND" [D/A] calls have a VERY high completion ratio. "ANY D/A" call that is one minute or more in duration has a better than 90% completion ratio.

As a side matter to this item - I have kept track of year end totals for the "length" of the "AVERAGE" D/A call. It is a simple matter. Divide the yearly total number of D/A by the years "Total Usage" time = the "average" Dial Around call.

In our case that Dial Around Call figure has been in the area of [12 minutes] Per Call - year after year. To translate that figure into the charge for a "LOCAL" call would equal \$1.00!!!!. For the same amount of D/A payment we would "theocratically" be paid [24 cents] - theocratically. In actuality we are paid about 50% of the time which equates to [12 cents] per call!!!!. So for the same "basic" use of our pay telephone - we go from a [\$1.00 payment] to a [12 cent payment] - not even "cost coverage"!!!!.

This is the case in almost 50% of our TOTAL pay telephone usage!!!!. Dial Around usage has increased at the average pay telephone to the point that it is close to 50% of TOTAL usage - because of "Toll Free" / Dial Around/ usage being provided by so many dial tone providers. These providers are selling dial tone to tens of thousands of "Independents" as nothing more than a "sales" gimmick.

There is no logical reason why we, the pay phone service providers, should have to "subsidize the dial tone companies' sales gimmicks"!!!!.

For that matter, according to the Federal Telecommunications Act of 10/01/1996, dial tone providers were to furnish dial tone to pay phone providers based on a "cost plus" basis. This is known as the "Services Test". To this day there are many "dominant" dial tone providers that are not complying with the Federal Telecommunications Act.

This is "WHOLLY" due to the lack of action by State and Federal regulatory agencies.

Is it any wonder that about 50% of the pay telephone population has

"disappeared" over the last few years. In our case it is Over 50% reduction

Consider all of this in view of the "FACT" that the Federal Telecommunication Act of 1996 was to "INCREASE" and "PROMOTE" pay telephone services !!

It is more than obvious as to what is occurring in this matter. It is simple - Bottom Line

This "bottom line" - for the dial tone provider sales "gimmick"[toll free calling] - has amounted to Many ten's of millions of dollars that have been "AVOIDED" payment to the people that provided the equipment to provided their sales "gimmick" for them

Dial Tone providers are "dodging" and evading their payment obligations and catching a "free ride" at the expense of someone else

The time has come, after almost 8 years, to put a stop to this absurd farce that is now in effect for payment of Dial Around Compensation payments to pay telephone providers

It is the responsibility of the responsible "STATE" and "Federal" agencies to "enforce" the regulations "on the books"

I have either spoken to and written to all parties mentioned - for a number of years - including the Clinton administration - with NO results. It is far past "foot dragging" time with this matter. It is time for "concrete" action

The time has come for "toll free" compensation to be raised to the 50 cent level that has been determined by many independent evaluations [as fair and reasonable] and for severe consequences for those that "avoid" their payment obligations. In addition this so called "take back" program - implemented by so many dial tone providers - that does not furnish any documentation for the withholding of payments for payment obligations is absurd - especially when factoring in an "interest" payment in the process. It is highly unethical - and most likely illegal to in effect "force" a loan on someone and then ask for repayment - With Interest !! It is a totally Absurd concept !!

Your Response Please

Sincere Regards

Gary Buckland
President
USA Phones Southwest

CC - Bill Steele ///// Colorado PUC
Board of Federal FCC
Senator Wayne Allard, CO
Senator Ben Nighthorse Campbell
Fed Rep Joel Hefley
Colorado Pay Phone Association